

ASSEMBLY BILL

No. 993

Introduced by Assembly Member Wagner

February 18, 2011

An act to add Chapter 12.5 (commencing with Section 3195) to Part 2 of Division 8 of the Family Code, relating to mediation and counseling services.

LEGISLATIVE COUNSEL'S DIGEST

AB 993, as introduced, Wagner. Mediation and counseling services: discipline and immunity.

Existing law requires a court to set a case for mediation when child custody or visitation is at issue and authorizes a court to require parents, or other parties involved in a child custody or visitation dispute, to participate in outpatient counseling with a licensed mental health professional when it would be in the best interest of the child, as specified.

This bill would specify that a mediator and a licensed mental health professional are not liable for damages for an act or omission constituting ordinary negligence that occurs on or after January 1, 2012, during the performance of the above-described mediation and counseling services. The bill would prohibit a person from making a complaint to the board that issued a license to practice to the mediator or licensed mental health professional regarding the provision of those services and would, instead, require that the complaint be made to the court that set the matter for mediation or that required outpatient counseling. The bill would require the court to refer the matter to the licensing board for disciplinary action if it found unprofessional conduct on the part of the mediator or licensed mental health professional.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 12.5 (commencing with Section 3195)
2 is added to Part 2 of Division 8 of the Family Code, to read:

3
4 CHAPTER 12.5. DISCIPLINE AND IMMUNITY
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6 3195. The following definitions apply for purposes of this
7 chapter:

8 (a) "Licensed mental health professional" means a person
9 providing counseling services in a child custody or visitation
10 dispute pursuant to the provisions of Chapter 12 (commencing
11 with Section 3190).

12 (b) "Mediator" means a person who is a mediator in cases
13 involving custody and visitation concerning children pursuant to
14 the provisions of Chapter 11 (commencing with Section 3160).

15 3195.1. A mediator and a licensed mental health professional
16 shall not be liable for damages for an act or an omission
17 constituting ordinary negligence that occurs on or after January 1,
18 2012, if the act or omission is within the scope of his or her duties
19 and occurs while providing services pursuant to Chapter 11
20 (commencing with Section 3160) or Chapter 12 (commencing with
21 Section 3190).

22 3195.2. (a) A complaint by any person against a mediator
23 regarding an act or omission occurring on or after January 1, 2012,
24 while the mediator provided services pursuant to Chapter 11
25 (commencing with Section 3160) shall be made to the court that
26 set the matter for mediation pursuant to Section 3170.

27 (b) A complaint by any person against a licensed mental health
28 professional regarding an act or omission occurring on or after
29 January 1, 2012, while the licensed mental health professional
30 provided services pursuant to Chapter 12 (commencing with
31 Section 3190) shall be made to the court that required that
32 outpatient counseling services be provided pursuant to Section
33 3190.

34 (c) The court shall consider the complaint made pursuant to this
35 section and determine whether it establishes unprofessional conduct

1 that would subject the mediator or the licensed mental health
2 professional to disciplinary action by the board that issued a license
3 to practice to the mediator or licensed mental health professional.
4 If the court makes such a finding, the court shall refer the matter
5 to that board for disciplinary action against the mediator or licensed
6 mental health professional.

7 3195.3. No person shall make a complaint to the board that
8 issued a license to practice to the mediator or the licensed mental
9 health professional for an act or omission described in Section
10 3195.2.

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